

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition

of

ROCKAWAY REALTY ASSOCIATES, L.P.

for Revision of a Determination or for Refund of
Mortgage Recording Tax under Article 11 of the Tax
Law with Reference to an Instrument Recorded on July
27, 2020.

DETERMINATION
DTA NO. 830426

Petitioner, Rockaway Realty Associates, L.P., filed a petition for revision of a determination or for refund of mortgage recording tax under article 11 of the Tax Law with reference to an instrument recorded on July 27, 2020.

On June 20, 2023 and June 28, 2023, respectively, petitioner, appearing by Goldberg Weprin Finkel Goldstein LLP (Matthew Hearle, Esq., of counsel), and the Division of Taxation, appearing by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel), waived a hearing and submitted this matter for determination based upon documents and briefs to be submitted by January 5, 2024, which date commenced the six-month period for the issuance of this determination. After due consideration of the documents and arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly calculated the New York City local mortgage recording tax due on a mortgage covering six parcels located within Queens and Nassau counties, pursuant to Tax Law § 260.

FINDINGS OF FACT

1. On March 18, 2020, petitioner, Rockaway Realty Associates, L.P., executed a building loan mortgage, assignment of leases and rents and security agreement (mortgage) in favor of Capital One, National Association, in the original principal amount of \$10,000,000.00, covering three parcels located in Nassau County on Rockaway Boulevard, Woodmere, New York, and three parcels located in Queens County on Rockaway Boulevard, Rosedale, New York (six parcels). These six parcels were detailed as Section 39, Block 626, lots 21, 24 and 25 within Nassau County and Block 13895, lot 80 and Block 13907, lots 60 and 101 within Queens County.

2. In conjunction with the recording of the mortgage, petitioner paid a mortgage recording tax in the amount of \$280,000.00 to Queens County on July 27, 2020. The mortgage recording tax was computed as if all six parcels were located within Queens County. The Queens County tax was computed in the following manner:

Mortgage amount	\$10,000,000.00
Basic tax @ .50%	\$ 50,000.00
Additional tax @ .30%	30,000.00
Special additional tax @ .25%	25,000.00
New York City local tax @ 1.75%	<u>175,000.00</u>
Total tax	\$280,000.00

3. Petitioner filed form MT-15.1, mortgage recording tax claim for refund (refund claim), dated January 13, 2021, with the Division of Taxation (Division). Petitioner's refund claim requested a refund of the New York City local mortgage recording tax in the amount of \$164,442.95, based upon its claim that a portion of the New York City local mortgage recording tax was overpaid on the Nassau County parcels. Nassau County does not impose the New York City local mortgage recording tax. In calculating the refund requested, petitioner "normalized

the assessed value calculation method between Nassau and Queen [counties] to determine the ‘relative’ assessed values” for purposes of calculating the apportionment factor. Attachments to petitioner’s refund claim consisted of a form MT-15, mortgage recording tax return (form MT-15) and a total of three pages printed from the New York City data portal that contained information pertaining to the 2020-2021 final assessment “EXPLANATION OF ASSESSMENT ROLL” (2020-2021 final assessment roll information) for the borough of Queens, Block 13907, lot 101, Block 13907, lot 60 and Block 13895, lot 80. The 2020-2021 final assessment roll information for each of the three Queens County parcels included assessment information consisting of the property’s estimated market value (land and total),¹ the taxable/billable assessed value and the market value history. No supporting documentation was attached to the refund claim regarding the 2020-2021 final assessment roll for the three Nassau County parcels, i.e., their assessed and estimated market values and the equalization rate used by Nassau County.

4. On the form MT-15, petitioner calculated a New York City local mortgage recording tax due in the amount of \$10,557.05 for the Queens County parcels. In arriving at the New York City local tax due amount, petitioner utilized the estimated market values of the parcels located within the counties, rather than the assessed values determined by the counties. Specifically, petitioner determined the assessed value for the three Queens County parcels to be \$2,671,000.00, and the assessed value for the three Nassau County parcels to be \$41,622,300.00,² with the total assessed value for the six parcels to be \$44,293,300.00. To calculate the local mortgage recording tax to be apportioned, petitioner multiplied \$175,000.00,

¹ The equalization rate used by Queens County does not appear on the 2020-2021 final assessment roll information for any of the Queens County parcels.

² The method and calculation used by petitioner to determine the estimated market values of the Nassau County parcels is not part of the record.

i.e., the local tax to be apportioned, by the apportionment factor of .060326³ and determined \$10,557.05 in local tax to be due plus \$105,000.00 (\$50,000.00 [basic tax] + \$30,000.00 [additional tax] + \$25,000.00 [special additional tax]), for a total mortgage recording tax due in the amount of \$115,557.05.

5. The review of petitioner's refund claim was assigned to Joseph Mayer, an Excise Tax Technician II in the Division's audit division. Mr. Mayer has been employed by the Division for 25 years and has held his current title for 15 years. His responsibilities include the review and audit of mortgage tax refund claims. Additionally, Mr. Mayer assists the county clerks in their administration, collection, and distribution of the mortgage recording tax.

6. As part of his review of petitioner's refund claim, the auditor reviewed the mortgage. Based upon his review of the refund claim, the auditor determined that petitioner calculated and paid mortgage recording tax in the amount of \$280,000.00 that included a New York City local mortgage recording tax in the amount of \$175,000.00 initially, as if all six parcels were located within Queens County, and then filed the refund claim for the portion of the local mortgage recording tax overpaid on the Nassau County parcels. The auditor also determined that in calculating the local mortgage recording tax due as part of its refund claim, petitioner "normalized" the assessed value calculations between Nassau and Queens counties to determine the "relative" assessed values for each county.

7. Based upon his review of the refund claim, the auditor recalculated the New York City local mortgage recording tax due by using the assessed valuations for the six parcels taken from

³ In determining the apportionment factor, form MT-15, schedule C, line 19, column C directs the assessed value of the 3 Queens parcels be divided by the total assessed value of the six parcels. Specifically, \$2,671,000.00 divided by \$44,293,300.00 results in an apportionment factor of .060303, not .060326 as incorrectly listed on the form MT-15.

the last assessment rolls for both counties to apportion the tax due as required by Tax Law § 260.

The Division’s recalculation follows:

“Queens/Nassau County Tax Computation:

Mortgage Amount		\$10,000,000.00
Basic Tax @ .50%	\$ 50,000.00	
Additional Tax @ .30%	30,000.00	
Special Additional Tax @ .25%	25,000.00	
New York City Local Tax	<u>129,986.85</u>	
Total Tax	\$234,986.85”	

In determining the New York City local tax amount of \$129,986.85, the Division used the following assessed valuations and calculations:

“Queens County assessed valuations:

<u>Block</u>	<u>Lot</u>	<u>Amount</u>
13895	80	\$ 644,400.00
13907	60	371,250.00
13907	101	<u>186,300.00</u>
Total		\$ 1,201,950.00

Nassau County assessed valuations:

<u>Sec.</u>	<u>Block</u>	<u>Lot</u>	<u>Amount</u>
39	626	21	\$ 146,945.00
39	626	24	150,497.00
39	626	25	<u>118,781.00</u>
Total			\$ 416,223.00

Total Queens/Nassau assessed valuation: \$1,618,173.00

$\$1,201,950.00 / 1,618,173.00 = .742782 \times \$175,000.00 = \$129,986.85$ (NYC local tax)”

8. The Division issued an order of refund (order), dated February 3, 2021, that allowed a refund in the amount of \$45,013.15 to petitioner for the New York City local mortgage recording tax that pertained to the three Nassau County parcels. In its order, the Division found, among

other things, that its overpayment computation was “based upon the relative assessed values of the six connected parcels which make up the property secured by the mortgage.” The order directed Queens County to issue the refund to petitioner.

9. By letter, dated February 5, 2021, the Division notified petitioner that its refund claim in the amount of \$164,442.95 was partially approved in the amount of \$45,013.15, and that the balance of the refund claim in the amount of \$119,429.80 was denied (partial denial of petitioner’s refund claim). This letter provided the following reason for the Division’s denial of the balance of petitioner’s refund claim:

“Your corresponding Mortgage Recording Tax Return (NY Form MT-15), [sic] utilized market valuations rather than assessed valuations. Pursuant to Article 11, Section 260 of the New York State Tax Law, the relative assessed values of a property located wholly within the state are utilized in the apportionment, the allocation of mortgage recording tax between separate New York tax districts and localities.”

The letter also advised that an attached addendum contained the refund computation⁴ and Queens County would process and mail the respective refund to petitioner. A copy of the order was also enclosed.

10. The record does not include any documentation setting forth the 2020-2021 equalization rates for either Queens County or Nassau County.

CONCLUSIONS OF LAW

A. Article 11 of the Tax Law imposes excise taxes on the recording of mortgages on real property situated in New York State. The taxes imposed under article 11 include the basic tax (Tax Law § 253 [1]), the special additional tax (Tax Law § 253 [1-a]), the additional tax (Tax Law § 253 [2] [a]) and the New York City tax (Tax Law § 253-a). While the tax is imposed on the privilege of recording the mortgage, the basis of the computation of the tax is the amount of

⁴ The details of the refund computation are set forth in finding of fact 7.

principal debt or obligation secured by the mortgage at the date of execution (*see e.g.* Tax Law § 253 [1]). The tax is payable on the recording of the mortgage and is payable to the recording officer of the taxing district where the real property or any part thereof is located (Tax Law § 257).

B. With respect to the New York City mortgage recording tax, Tax Law § 253-a (4) provides that where real property covered by a mortgage subject to such tax is situated within New York State but within and without New York City, the amount of tax due and payable to the City “shall be determined in a manner similar to that prescribed in the first paragraph of [Tax Law § 260] which concerns real property situated in two or more counties.” Tax Law § 260, in relevant part, provides:

“When the real property covered by a mortgage is situated in more than one tax district, the state tax commission shall apportion the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls. If, however, the whole or any part of the property covered by such a mortgage is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as a part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the tax commission may require the local assessors in the respective tax districts, or the mortgagor, or mortgagee, to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionment. If such mortgage covers real property in two or more counties, the tax commission shall determine the proportion of the tax which shall be paid by the recording officer who has received the same to the recording officers of the other counties in which are situated the tax districts entitled to share therein.”

C. As noted above, in conjunction with the recording of a mortgage, dated March 18, 2020, petitioner paid a mortgage recording tax in the amount of \$280,000.00 to Queens County on July 27, 2020, which included New York City local mortgage recording tax in the amount of \$175,000.00, as if all six parcels covered by the mortgage were located within Queens County. Subsequently, on January 13, 2021, petitioner filed a refund claim requesting a refund of the

New York City local mortgage recording tax in the amount of \$164,442.95, based upon its claim that a portion of the New York City local mortgage recording tax was overpaid on the Nassau County parcels. In calculating the New York City local mortgage recording tax due as part of its refund claim, petitioner “normalized” the assessed value calculations between Nassau and Queens counties to determine the “relative” assessed values of the parcels located in each county before apportioning the tax due. As part of its review of petitioner’s refund claim, the Division calculated the New York City local mortgage recording tax due by utilizing the relative assessed values of the six parcels located within Queens and Nassau counties in the apportionment of the tax. As a result of its calculation of the New York City local mortgage recording tax, the Division granted a partial refund in the amount of \$45,013.15, but denied the remainder of petitioner’s refund claim, i.e., \$119,429.80.

D. Petitioner is challenging the Division’s calculation of the New York City local mortgage recording tax, and the resulting partial denial of its refund claim. In calculating the New York City local mortgage recording tax due in this matter, the Division apportioned the tax due based upon the relative assessments of the six parcels within Queens and Nassau counties, as the same appeared on the last assessment rolls of those counties. The method of apportionment used by the Division is expressly provided for in Tax Law § 260 and was explicitly affirmed by the Court of Appeals in *Matter of Long Is. Light. Co. v State Tax Commn.* (45 NY2d 529 [1978]) as follows:

“We hold that the New York City mortgage recording tax with respect to a mortgage covering real property located both within and without the city was properly determined by the State Tax Commission on the basis of the relative assessments of such property as they appeared on the respective assessment rolls, without adjustment for differences in equalization rates (*id.* at 532-533).”

E. Petitioner contends that most of the physical area of the six parcels is located within Nassau County, with only a small percentage of the physical area located within Queens County. Petitioner further contends that the two counties utilize “hugely disparate equalization rates in establishing their respective assessed property values.” It argues that the practical effect of such difference “is a skewing of assessed valuations” so that the Queens County parcels, minimal in physical area, carry “an outsized share of the assessed valuation,” because Queens County’s equalization rate is far greater than Nassau County’s equalization rate. Petitioner claims that by ballooning the valuation of the three parcels located within Queens County, the New York City local mortgage recording tax is wrongfully inflated without a rational basis. Petitioner maintains that reliance on *Long Is. Light. Co.* is unwarranted in the present circumstances. It asserts that the factual underpinning of *Long Is. Light. Co.* was “an alleged inflated tax arising from application of different equalization rates” between Queens and Nassau counties. It further asserts that in *Long Is. Light. Co.* “the different equalization skewed the raw data from 4% to 11%.” However, petitioner claims that in the present matter, “the raw valuations are exponentially more disparate.” Petitioner claims that the disparity in the raw valuations creates fictitious value for the three Queens County parcels that irrationally inflate the New York City mortgage recording tax due in this matter.

Petitioner’s contention is rejected. As noted, *Long Is. Light. Co.* addressed the issue of whether equalization rates should be applied to reflect real value in the apportionment of mortgage recording tax between New York City (Queens) and Nassau County. In reaching its conclusion, the Court first addressed the fairness issue, noting the Legislature’s “very nearly unconstrained authority in the design of taxing impositions” and further noting that “fairness and equity are not the principal criteria against which the validity of tax statutes is to be determined,”

but that the production of “optimum revenue” may have been the objective (*id.* at 535-536). The Court also noted that the method of apportioning the tax was in conformity with Tax Law §§ 260 and 253-a and observed that the “Legislature could easily have provided for incorporation of the equalization concept in the determination of the recording tax if it had chosen to do so” (*id.* at 535-536). The Court thus considered and rejected the use of equalization rates in the calculation of the New York City mortgage recording tax liability.

F. Petitioner’s contention that Tax Law § 260 is ambiguous is rejected. There is no ambiguity in the statute. Tax Law § 260 expressly directs the apportionment of tax “upon the basis of the relative assessments” of the property as they appear “on the last assessment-rolls.” Indeed, the Court in *Long Is. Light. Co.* found no ambiguity or imprecision in Tax Law § 260, noting that:

“the practice of fractional assessments long antedated the enactment in 1971 of section 253-a of the Tax Law authorizing imposition of the New York City mortgage recording tax, and that the process and coexistence of equalization rates were then firmly embedded in our tax structure. The Legislature could easily have provided for incorporation of the equalization concept in the determination of the recording tax if it had chosen to do so. It is not insignificant that the statutory language of the first and third sentences of the first paragraph of section 260 calling for apportionment on the basis of assessed values has been interpreted and applied in the 70 years that the mortgage tax law has been in effect, both before and after enactment of section 253-a. . . . The statutory terminology has not been altered since first enacted in 1905, and must be taken to have the same meaning after the enactment of section 253-a as it had before that enactment” (*id.* at 535-536 [internal citations omitted]).

G. Based upon the foregoing, the Division’s interpretation of Tax Law § 260 is rational and reasonable. Accordingly, in its calculation of the New York City mortgage recording tax due on the three Queens County parcels, the Division properly “apportion[ed] the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls” (*see* Tax Law § 260).

H. The petition of Rockaway Realty Associates, L.P., is denied and the Division of Taxation's partial denial of petitioner's refund claim in the amount of \$119,429.80, by letter dated February 5, 2021, is sustained.

DATED: Albany, New York
June 27, 2024

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE